

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO  
VILLATORO, MISAEL ALEXANDER MARTINEZ  
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA  
MOREIRA and MATEO UMANA individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO  
LANDSCAPING, INC., E.L.M. GENERAL  
CONSTRUCTION CORP. D/B/A KELLY'S CREW,  
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014  
(PAE)(SDA)

**DECLARATION OF ELI Z. FREEDBERG IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS DEFENDANT KELCO LANDSCAPING, INC.  
AND TO DISMISS THE FOURTH THROUGH EIGHTH CAUSES OF ACTION  
FROM PLAINTIFFS' SECOND AMENDED COMPLAINT**

I, Eli Z. Freedberg, an attorney duly admitted to practice before the Courts of the  
State of New York, hereby affirm under penalty of perjury:

1. I am a shareholder of the law firm of Littler Mendelson, P.C., counsel for  
Defendants Kelco Construction, Inc. ("Kelco Construction"), Kelco Landscaping, Inc., ("Kelco  
Landscaping"), E.L.M. General Construction Corp. d/b/a Kelly's Crew ("ELM"), John Kelly  
("Mr. Kelly"), and Joseph Provenzano ("Mr. Provenzano") (collectively "Defendants") in the  
above-captioned action. By virtue of my representation of Defendants in this action, I have  
become familiar with the facts and circumstances at issue herein.

2. This Declaration is respectfully submitted in support of Defendants' Motion to  
Dismiss Plaintiffs' Second Amended Complaint (the "Motion"), pursuant to Rules 12(b)(1) and  
12(b)(6) of the Federal Rules of Civil Procedure.

3. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiffs' Second

Amended Complaint, filed on December 23, 2022 (Dkt. 63).

4. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiffs' Re-filed Second Amended Complaint, filed on December 29, 2022 (Dkt. 68).

**WHEREFORE**, based on the evidence set forth above and recited at length in Defendants' accompanying Memorandum of Law, and for the reasons set forth therein, Defendants respectfully request that the Court grant Defendants' Motion, together with such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 20, 2023  
New York, New York

/s/ **Eli Z. Freedberg**  
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